

ORDER
10.12.2021

Mr. Fazal Shah Mohmand, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 15297/2020 titled "Farooq Siyar Versus Capital City Police Officer, Peshawar and two others", the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.12.2021


(Ahmad Sultan Tareen)
Chairman


(Salah-ud-Din)
Member (Judicial)

Service Appeal No. 15299/2020

ORDER
10.12.2021

Mr. Fazal Shah Mohmand, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused. Arguments heard and record perused.

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ANNOUNCED
10.12.2021


(Ahmad Sultan Tareen)
Chairman



(Salah-ud-Din)
Member (Judicial)

14.10.2021

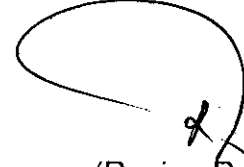
Junior of learned counsel for the appellant present.

Mr. Riaz Khan Paindakheil, Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before august Supreme Court of Pakistan; granted. To come up for arguments on 29.11.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

29.11.2021 Due to non-availability of DB, the
case is adjourned to 10-12-2021

A. mi
Reader.

15299/20

26.05.2021

Appellant in person and Mr. Kabirullah Khattak, Addl. AG
alongwith Abdur Raziq, H.C for the respondents present.

Written reply/comments have not been submitted.
Respondents are directed to submit written reply/comments in
office within 10 days, positively. If the written reply/
comments are not submitted within the stipulated time, the
office is required to submit the file with a report of non-
compliance. File to come up for arguments on 10.08.2021
before the D.B.



Chairman

10.08.2021, Since, 1st Moharram has been declared as public
holiday, therefore, case is adjourned to 31/8/2021 for
the same as before.



Reader

31.08.2021

Mr. Fazal Shah Mohmand, Advocate, for the appellant
present. Mr. Muhammad Rasheed, Deputy District Attorney for
the respondents present and stated that the brief of the instant
appeal was assigned to Mr. Usman Ghani, District Attorney
however, he is unable to appear before the Tribunal today due to
illness. Adjourned. To come up for arguments before the D.B on
14.10.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

15.01.2021

Mr. Fazal Shah Mohmand, Advocate, for appellant is present. According to the learned counsel the allegations against the appellant are that appellant alongwith two other colleagues were reportedly involved in a criminal case vide FIR No. 2020 dated 26.02.2020 under Section 9-D CNSA. 22-A-170PPC-119 Police Act, 2017, of Police Station Sarband Peshawar. Disciplinary proceedings were initiated against all the officials appellant was dismissed from service without adherence to the law and rules on the subject. On exhausting the departmental remedy in consequence of which his appeal was rejected he submitted the instant service appeal.

The point so agitated at the bar needs consideration. The appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 18.03.2021 before S.B.

Appellant Deposited
Security & Process Fee

15/1/21

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

18.03.2021

Junior to counsel for the appellant and Addl: AG for respondents present.

Written reply/comments on behalf of respondents not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments.

Adjourned to 26.05.2021 before S.B.

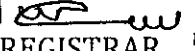

(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 15299 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/12/2020	<p>The appeal of Mr. Hussain Khan presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/12/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Hussain khan.....Appellant

V E R S U S

CCPO & others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-4
2.	Copy of FIR & Suspension Order	A & B	5-6
3.	Copy of Charge Sheet & Reply	C & D	7-9
4.	Copy of Inquiry Report	E	10-11
5.	Copy of Final Show Cause Notice & reply	F & G	12-13
6.	Copy of Order dated 18-05-2020	H	14
7.	Copy of departmental appeal & Order dated 20-11-2020	I & J	15-16
8.	Copy of Judgment dated 20-10-2020	K	17-32
9.	Vakalat Nama		33

Dated:-30-11-2020

Through


Appellant

(Hussain Khan)


Fazal Shah Mohmand
Advocate,

Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841

Email:- fazalshahmohmand@gmail.com

-1-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 15299/2020

Hussain Khan, Ex Constable No 5882, Capital City Police Officer,
Peshawar.....**Appellant**

V E R S U S

1. Capital City Police Officer, Peshawar.
2. Senior Superintendent of Police, Operations, Peshawar.
3. Provincial Police Officer, Khyber Pkhtunkhwa, Peshawar.

.....**Respondents**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15887

Dated 01/12/2020

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT
1974 AGAINST THE ORDER DATED 20-11-2020
WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT
FILED AGAINST THE ORDER DATED 18-05-2020 OF THE
SENIOR SUPERINTENDENT OF POLICE, OPERATIONS
PESHAWAR HAS BEEN REJECTED.**

PRAYER:-

On acceptance of this appeal the impugned Order dated 20-11-2020 & Order dated 18-05-2020 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

Filed to-day

Registrar
01/12/2020

1. That the appellant was enlisted as Constable in District Police Peshawar on 10-08-2009 and since enlistment performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
2. That in the month of February 2020, the appellant while lastly posted to Police Post Industrial Estate of Police Station, Hayatabad, was involved along with two other colleagues in Criminal Case vide FIR No 2020 dated 26-02-2020 Under Sections 9-D-CNSA.225-A-170PPC/119 Police Act 2017 of Police Station Sarband Peshawar and was suspended along with two other colleagues vide Order dated 26-02-2020. **(Copy of FIR & Order dated 26-02-2020 is enclosed as Annexure A & B).**

3. That Charge Sheet was issued to the appellant along with two other colleagues which the appellant replied in detail refuting the allegations and explaining the true facts and circumstances. **(Copy of Charge Sheet & reply is enclosed as Annexure C & D).**
4. That there after an illegal inquiry was conducted wherein no one was examined in presence of neither the appellant nor the appellant was provided reasonable opportunity to defend his case. **(Copy of Inquiry Report is enclosed as Annexure E).**
5. That Final Show Cause Notice was issued to the appellant on 09-04-2020 which the appellant also replied refuting the allegations and explaining the true facts and circumstances. **(Copy of Final Show Cause Notice & Reply is enclosed as Annexure F & G).**
6. That without considering the reply and record the appellant was awarded the major penalty of Dismissal from service vide Order dated 18-05-2020. **(Copy of Order dated 18-05-2020 is enclosed as Annexure H).**
7. That the appellant filed departmental appeal before respondent No 1 15-06-2020 which was rejected vide Order dated 20-11-2020. **(Copy of Departmental appeal & Order dated 20-11-2020 is enclosed as Annexure I & J).**
8. That the impugned Order dated 20-11-2020 & Order dated 18-05-2020 are against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned Order 20-11-2020 & Order dated 18-05-2020 are illegal, unlawful and void ab-initio.
- B. That mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the impugned Order is void being passed without lawful authority.
- D. That no proper inquiry was conducted in the matter to have found out the true facts and circumstances. No one

was examined neither in support of the allegations nor in presence of the appellant nor was he ever afforded opportunity of cross examination.

- E.** That the appellant was proceeded on the ground of being involved in criminal case from which he has been acquitted by the Court of competent jurisdiction vide Judgment dated 20-10-2020 and as such too the appellant is entitled to be reinstated in service. **(Copy of Judgment dated 20-10-2020 is enclosed as Annexure K).**
- F.** That even otherwise the allegations were never substantiated, as no evidence during the so called inquiry was collected.
- G.** That even the appellant was committed to prison since arrest and was set free after acquittal, as such is entitled to all service benefits as per FR 53 and 54.
- H.** That Civil Service Regulations 194 and 194-A are very much clear on the point that the appellant was required to had been placed under suspension after he was detained and upon acquittal was required to had been reinstated in service with all service benefits.
- I.** That the appellant was not afforded opportunity of personal hearing.
- J.** That even there are contradictions as whether the narcotics were taken to Police Post or Home, thus too the charges are not established.
- K.** That the appellant did what as per law he was duty bound to do however no evidence is there that the appellant ever brought the narcotics to his home which allegation is negated by the FIR as well as by the statements of witnesses examined during inquiry.
- L.** That the allegations leveled against the appellant are negated by the contradictions in statements of the witnesses examined during trial.
- M.** That so far the allegations mentioned in the Charge Sheet are concerned the same are totally false and baseless, as

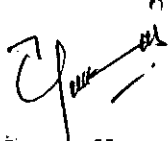

the appellant did nothing that would amount to misconduct.

- N. That the appellant could not be punished for the fault of others if any.
- O. That the appellant has about 11 years of service with unblemished service record.
- P. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated:-30-11-2020


Appellant
(Hussain Khan)
Through

Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

پولیس نمبر 2286/13

ابتدائی اطلاع کی رپورٹ
تاریخ وقت رپورٹ: 20.06.2011
گرم: 23-05 (1)

تاکل

مطلع: 19

17

252

تاریخ وقت رپورٹ: 23/5/2011 وقت: 07:00 تا 08:00

نام و سکونت اطلاع دہندہ مستشیت: 13:15 تا 17:15

تفصیلات جرم (مختارہ) خالی اگر کوئی ناکارہ: 26-5-2011

تاریخ و ذمہ دار اطلاع دہندہ سے اور سمت: 9 District HQ Antimalar police unit 2017

نام و سکونت جرم ڈاکٹر ایڈوارڈ: 1839

کارروائی جو تفتیش کے حلقہ کی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وضاحت بیان کرنا: FC

تعلقہ سے رپورٹ کی تاریخ و وقت

ابتدائی اطلاع نیچے درج کرو ہے۔

157
4705
5050

تفصیلات جرم: ایک شخص نے ایک گاڑی میں داخل ہو کر گاڑی کے آئینے کو توڑ دیا اور گاڑی سے نکل کر فرار ہو گیا۔

مطلع: 19
تاریخ وقت رپورٹ: 23/5/2011
وقت: 07:00 تا 08:00

نام و سکونت اطلاع دہندہ: 13:15 تا 17:15

تفصیلات جرم: ایک شخص نے ایک گاڑی میں داخل ہو کر گاڑی کے آئینے کو توڑ دیا اور گاڑی سے نکل کر فرار ہو گیا۔

تاریخ و ذمہ دار اطلاع دہندہ سے اور سمت: 9 District HQ Antimalar police unit 2017

نام و سکونت جرم ڈاکٹر ایڈوارڈ: 1839

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تعلقہ سے رپورٹ کی تاریخ و وقت

ابتدائی اطلاع نیچے درج کرو ہے۔

157
4705
5050

تفصیلات جرم: ایک شخص نے ایک گاڑی میں داخل ہو کر گاڑی کے آئینے کو توڑ دیا اور گاڑی سے نکل کر فرار ہو گیا۔

مطلع: 19
تاریخ وقت رپورٹ: 23/5/2011
وقت: 07:00 تا 08:00

نام و سکونت اطلاع دہندہ: 13:15 تا 17:15

تفصیلات جرم: ایک شخص نے ایک گاڑی میں داخل ہو کر گاڑی کے آئینے کو توڑ دیا اور گاڑی سے نکل کر فرار ہو گیا۔

تاریخ و ذمہ دار اطلاع دہندہ سے اور سمت: 9 District HQ Antimalar police unit 2017

نام و سکونت جرم ڈاکٹر ایڈوارڈ: 1839

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تعلقہ سے رپورٹ کی تاریخ و وقت

ATTSTED TO BE TRUE COPY

مقامی حکومتوں کے لئے... اس کے لئے...

26-02-2020... 13:15... 23-23... 26-02-2020... 05:30... 07:00... 4705... 157... اس کے لئے...

اس کے لئے... 26-02-2020

اطلاع کے لئے... ایک لکڑی...

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OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS)
PESHAWAR

ORDER

On account of their involvement in criminal case FIR No.202 dated 26.02.2020 u/s 9D-CNSA/225-A/170-PPC/119 Police Act/2017, PS Sarband, the following police officials of Capital City Police Peshawar are hereby placed under suspension and closed to Police Lines Peshawar with immediate effect

S.NO	NAME & RANK	PLACE OF POSTING
1	IHC Farooq Siyar No. 38	GD PP Industrial Estate PS Hayatabad
2	LHC Ahtiram No. 4707	Moharrar PP Industrial PS Hayatabad
3	Constable Hussain No. 5882	GD PP Industrial Estate PS Hayatabad

They are being proceeded against departmentally under Police (E&D) Rules, 1975.


SENIOR SUPERINTENDENT OF POLICE
(OPERATIONS) PESHAWAR

No. 561-68 /PA dated Peshawar the 26/02 /2020

Copy for information and necessary action to the:-

1. Capital City Police Officer, Peshawar
2. SP Cantt CCP Peshawar.
3. SP HQs CCP Peshawar
4. SDPO Hayatabad CCP Peshawar
5. AD-IT
6. EC-II/OSI/CRC
7. FMC

TESTED TO BE
TRUE COPY

-7-400- "C"

CHARGE SHEET

Whereas I am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar.

And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Senior Superintendent of Police, Operations, Peshawar hereby charge you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar under Rule 5 (4) of the Police Rules 1975 on the basis of allegations mentioned in the enclosed statement of allegations.

I hereby direct you further under Rule 6 (1) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why the action should not be taken against you and also stating at the same time whether you desire to be heard in person.

In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS) PESHAWAR

No. 291 E/PA dated Peshawar the 28/02/2020.

Copy of the above along with Summary of Allegations is forwarded for information and necessary action to the:-

1. Enquiry Officer to please conduct enquiry on day-to-day basis without interruption and submit your findings and grounds thereof to this office within stipulated period.
2. The accused officer.

ATTESTED TO BE
TRUE

-8- -8-

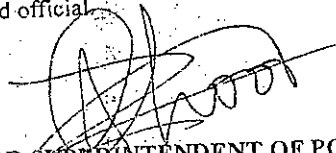
STATEMENT OF ALLEGATIONS

I, SSP/Operations, Peshawar as competent authority, am of the opinion that you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar have rendered yourself liable to be proceeded against, as you have committed the following acts/omission within the meaning of section 03 of the Khyber Pakhtunkhwa Police Rules, 1975.

- i) You IHC Farooq Siyar (GD) along with LHC Ikhteram 4705 (MHC PP) and FC Hussain Khan No. 1882 (GD) while posted at PP Industrial PS Hayatabad rushed to the jurisdiction of PS Sarband on your own and seized narcotics (19.2 KG Charas & 10.8 KG Opium) from the possession of accused Zakir Ullah r/o Bara Khyber without intimation to SHOs Sarband or Hayatabad or any other senior officer.
- ii) After seizure, you along with the above named police officials took the accused and narcotics to your home in Surezai for the purpose of bargaining with the smuggler party for their release and subsequent return of the seized narcotics.
- iii) In the meanwhile the SHO PS Sarband on receipt of credible information started enquiry u/s 157 Cr.P.C vide Mad No. 26 dated 23/02/2020 into the alleged seizure of narcotics in his AOR during which your involvement in the episode was established and the seized narcotics was recovered from you. Accordingly, case FIR No. 202 dated 26/02/2020 u/s 9D-CNSA/119 Police Act, 2017/225-A/170 PPC was registered against you at Police Station Sarband.
- iv) Being members of the discipline force, your this act amounts to gross misconduct and render you liable for disciplinary proceedings under Police Rules 1975.

For the purpose of scrutinizing the conduct of a fore said police official in the said episode with reference to the above allegations SP Rurral is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

The Enquiry Officer shall in accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.


SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS), PESHAWAR

No. 291 E/PA, dated Peshawar the

28/02/2020

ATTESTED TO BE
TRUE

بیان اذال حسین کان 5882
FC

منابع عالی!

مدرسہ 23² کو پورے تقریباً 8000 روپے کی رقمیں ملیں۔ میں نے یہ اطلاع اہتمام 4705 و فادریں سید کا 111
کو پہلایا کہ ہماری مقدار میں منشیہ 2 سے مل کر کسی اطلاع میں اور یہاں تک کہ وقت ہم سے 2 RIC سالوں
دائستہ ہیں۔ تو خبر سے اطلاع دی کہ منشیہ 2 سے مل کر پورے وقت تک چکا ہے، منشیہ 2 سے مل کر
کا پورے وقت تک ہم نے پورے وقت تک دعوہ دیا ہے، جب ہم خبر نہ ملے
تو بلاتے ہیں۔ تو خبر سے درجہ پورا جسٹس پورے وقت تک منشیہ 2 سے مل کر
دائستہ سے سربراہ داد میں داخل ہوگا، اور دعوہ وہاں سے پورے وقت تک
نکالے گا، پھر وہ بعد خبر سے اطلاع دی، کہ منشیہ 2 سے مل کر پورے وقت تک
عدالت و ادارے کے دائرے سے نکالے گا، اور اس سے آگے آگے سید اللہ منظور پورے وقت
اسٹال ہوگا، ہم خبر سے اطلاع پورے وقت تک دعوہ دیا ہے، اور عدالت و ادارے سے
تک ملے، سے سید اللہ منظور میں دعوہ کی طرف نکلے ہم اسی دائرے میں داخل ہو کر
تقریباً 60% گرتے حاصل کیے گئے، پھر عدالت میں خبر سے مل کر سید اللہ منظور پورے وقت تک
90% گرتے حاصل ہوئے ہیں آیا، تو میں نے گاڑی کا دعوہ دیا، اور جب میں آگے گیا
تو منشیہ 2 سے مل کر باوردی دیکھا، تو فوراً اس میں سید اللہ منظور کو ڈی جی
منشیہ 2 کی پوری سروسٹیکل پورے وقت تک میں نے گرتے گئے میں فوراً پوری اٹھا کر گاڑی میں دگو
دی، اور حلزم کا دعوہ آیا، تین دنوں میں سے بانی میں مل گیا، پورا فادریں سید کا 111
5882 میں سید کو پورے وقت تک اطلاع دیا، اور موقع پر بلا کر منشیہ 2
دستہ طور پر حوالہ دیا، دیکر میں لا علم ہو۔

اسکا تابع فرمان گنجل حسین کان سید 5882 سیدہ لیلیٰ لیلیٰ

ATTESTED TO FC



OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. 567 /SPR, DT: 1/4 /2020
Email: officespruralpeshawar@gmail.com

To: The SSP Operations, Peshawar

Subject: **DEPARTMENTAL ENQUIRY AGAINST IHC FAROOQ SIAR (GD), LHC IKHTERAM NO. 4705 (MHC PP) AND FC HUSSAIN KHAN NO. 1882, PP INDUSTRIAL ESTATE**

Memo:

Please refer to your office diary No291/E/PA, dated: 28.02.2020.

Allegations:

It was alleged that:-

- i) IHC Farooq Siyar (GD) along-with LHC Ikhteram No. 4705 (MHC PP) and FC Hussain Khan No. 1882 (GD) of PP Industrial Estate, PS Hayatabad rushed to jurisdiction of PS Sarband on their own and seized narcotics (19.2 Kg Chars and 10.8 Kg opium) from possession of accused Zakir Ullah r/o Bara Khyber without intimation to SHOs Sarband or Hayatabad or other senior officer.
- ii) After seizure, they took the accused and narcotics to home at Surizai for purpose of bargaining with the smuggler party for their release and subsequent return of the seized narcotics.
- iii) In the meanwhile, SHO Sarband on receipt of credible information started enquiry U/S 157 Cr.P.C vide DD No. 26, dated: 23.02.2020 into the alleged seizure of narcotics in his AoR during which their involvement in the episode was established and the seized narcotics was recovered from them. Accordingly, case FIR No. 202, dated: 26.02.2020 U/S 9DCNSA/119 Police Act, 2017/225-A/170 PPC was registered against them at PS Sarband.

Proceedings:

Charge sheets along-with summary of allegations were served upon the delinquent officials to which they submitted replies. They were heard in person and all the relevant documents were perused.

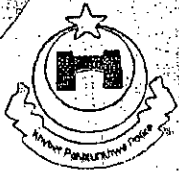
Statement of Ehteram No. 4705 MHC:

He stated that on 23.02.2020, FC Hussain Khan 5881 came to PP and stated that he has got information regarding smuggling of huge quantity of narcotics. Due to short time, he along-with IHC Farooq Siyar and FC Hussain rushed to ZRK Shah Kas road. Meanwhile, informer informed them that the smuggler has changed his route towards Ring Road. During chasing the smuggler, they reached Khyber Nakabandi point near Toll Plaza where the informer called them that the smuggler has now entered in the area of PS Sarband through Achini Road. They kept chasing the smuggler. During chasing the smuggler, he unluckily succeeded in escaping on bike but the narcotics bag while fallen on the earth from smuggler was taken into possession. They took the narcotics to PP. After some times, SHO Sarband made a phone call to IHC Farooq Siyar that he has arrested the said narcotics smuggler and hand over the narcotics to him so that FIR could be lodged against him. They went to PS Sarband and handed over the narcotics to SHO Sarband. At about 22:00 hours, SHO Hayatabad summoned them who was informed about the whole situation.

Statement of IHC Farooq Siar:

He stated that on 23.02.2020, FC Hussain Khan informed that he has got an information regarding smuggling of narcotics. Due to short time, they rushed to ZRK Shah Kas road. Meanwhile, informer informed them that the smuggler has changed his route towards Ring Road. During chasing the smuggler, they reached Khyber Nakabandi point near Toll Plaza, where the informer called them that the smuggler has now entered in the area of PS Sarband through Achini Road. They kept chasing the smuggler. Lastly, the smuggler succeeded in escaping on bike but narcotics bag fell to ground from smuggler was recovered. They took the narcotics to PP. After some times, SHO Sarband made a phone call that he has arrested the said narcotics smuggler and hand over the narcotics to him for registration of

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OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. 567 /SPR, DT: 11/4 /2020
Email: officespruralpeshawar@gmail.com

FIR against him. They went to PS Sarband and hand over the narcotics to SHO Sarband. At about 22:00 hours, SHO Hayatabad summoned them who was informed about the whole situation.

Statement of FC Hussain Khan:

He also narrated the above mentioned story and stated that they had got information regarding smuggling of narcotics. They started chasing the smuggler keeping in touch with informer but unluckily the said smuggler managed to escape, however, the narcotics fell to ground from smuggler was taken into possession which was brought to PP but on calling by SHO Sarband, they took the said narcotics to PS Sarband and handed over to SHO Sarband.

Findings/Recommendation:

During enquiry, it was established that all delinquent officials had seized the narcotics with mala fide intention. They claimed that accused / smuggler managed to escape while narcotics bag fell on ground which was taken into possession by them and was taken to PP Industrial and later was given to SHO Sarband as asked.

However, contrary to their claim, it was proved beyond shadow of doubt that they had arrested the smuggler / accused named Zakir with Narcotics bag from jurisdiction of PS Sarband and then took accused and narcotics bag to house of IHC Farooq Siyar at Surizaye Balā where bargaining took place. Call Data Records of delinquent Police officials and accused named Zakir verifies said fact. Moreover, another proof of their mala fide is that they did not bother to inform any of their superior officer about seizure of Narcotics which speaks volumes of their integrity failure.

Statement of allegation is proved against delinquent officials and are recommended for major punishment.

*Agreed with the
opinion of enquiry officer
Hence be given major punishment
Dismissal from
service*

Capt: (R) Najam Ul Hasnain Liaquat (PSP)
SP Rural Division, Peshawar.

13/5

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OFFICE OF THE
SENIOR: SUPERINTENDENT OF POLICE,
(OPERATIONS),
PESHAWAR
Phone. 091-9210508

Dated Peshawar the 07/14/2020

No 784 /PA

FINAL SHOW CAUSE NOTICE
UNDER POLICE RULES, 1975


Whereas you Constable Hussain No. 5882 while posted at PP Industrial Estate, PS Hayatabad allegedly committed an act of "misconduct" and were proceeded against under the Police Rules, 1975 vide Charge Sheet bearing No. 291/PA dated 28.02.2020.

2. Whereas Capt @ Najm-ul-Husnain Liaquat, SP/Rural Peshawar was appointed as enquiry officer who has submitted the enquiry report (copy of the enquiry report is enclosed)

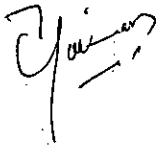
3. And whereas the undersigned as "Competent Authority" under the said rules, on considering the findings of the enquiry officer has reached to the conclusion that the charge/allegations contained in the aforesaid Charge Sheet has been established.

4. Now therefore, you Constable Hussain No. 5882 are called upon to show cause in writing within 7 days of the date of receipt of this notice as to why a penalty, including the major penalty of "Dismissal from Service" as provided under the Police Rules, 1975 may not be imposed upon you. You are also required to indicate in your reply if you want to be heard in person.

5. In case no reply is received within the specified period, it would be presumed that you have no defence to offer or have declined to offer the same and accepted the charges and in that case action against you shall be taken ex-parte.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

Constable Hussain No. 5882
(Accused Officer)



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صاحب عالی
 ڈرائیو کے حوالے سے بیان دیا گیا ہے کہ
 کوئی شخص اس کے پاس نہیں گیا۔ اس کے پاس
 عدالت میں ذمہ داری ہے۔ اس کے پاس
 عدالت میں ذمہ داری ہے۔ اس کے پاس
 عدالت میں ذمہ داری ہے۔ اس کے پاس
 عدالت میں ذمہ داری ہے۔ اس کے پاس

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....., the smuggler succeeded in escaping on bike but narcotics bag fell to ground from
 smuggler was recovered. They took the narcotics to PP. After some times, SHO Sarband made a phone
 call that he has arrested the said narcotics smuggler and hand over the narcotics to him for registration of




OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS,
PESHAWAR

- 14 -

ORDER

1. FC Hussain Khan 1882 while posted to PP Industrial Estate PS Hayatabad was placed under suspension and proceeded against departmentally vide this office No. 291/E/PA dated 28/02/2020 on account of his involvement in corrupt practices.
2. Charge sheet along with summary of allegations was issued to him and SP Rural was appointed as Inquiry Officer who after conducting a thorough probe into the allegations submitted his findings on 01.04.2020 wherein he held the accused official guilty of arresting smuggler named Zakir with narcotics bag having 19.2 Kg charas and 10.8 Kg opium from the jurisdiction of PS Sarband and then took the accused and narcotics bag to the house of IHC Farooq Siyar at Surizai Bala where bargaining with the accused for return of narcotics took place. Call data records of delinquent official and narcotics smuggler namely Zakir verifies the above fact. Moreover, another proof of his malafide is that he didn't bother to inform any of his superior officers about seizure of narcotics which speaks volume of his integrity.
3. On receipt of the findings, Final Show Cause Notice was issued to the delinquent official who accordingly submitted his written reply. The same was perused and found un-satisfactory.
4. Having gone through the enquiry file and other relevant record, the undersigned is fully satisfied that the delinquent official has committed a gross misconduct which is proved beyond any shadow of doubt. Thus, he brought bad name to the police department. In circumstances, the undersigned being competent under law hereby awards FC Hussain Khan 1882 the major punishment of dismissed from service with immediate effect.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

No. 963-67 /PA dated Peshawar, the 18/05 /2020.
Copy for information and necessary action to:

1. The Capital City Police Officer, Peshawar.
2. SP Rural & SP HQs, CCP, Peshawar
3. OSI/CRC/AS/PO/FMC
4. Official concerned.

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No 64-LB
15/6/2020

خدمت جناب کسٹیشن مینیجنگ پولیس آفیسر بشمارہ

Dy. No. 538
Dt. 15-6-2020

جناب عالی
عزتدار شہداء کے مسائل و جناب سپر/ڈپٹی سپر/ڈپٹی سپر/ڈپٹی سپر/ڈپٹی سپر

نمبر 67-963 مورخہ 18/05/2020 و عملہ پولیس سے اس لئے اہم درخواست کیا ہے
کہ مسائل جناب سریندر سنگھ کے متعلقہ سے منشیات کے بارے میں ملزم کی قیادت اور
جیلر صاحب کو مطلع کیا گیا ہے۔ شامل مع 144 قانونی سپارٹس 144 کے تحت
نے انہیں جیل میں رکھا گیا ہے۔ جناب سریندر سے منشیات کے بارے میں علم درج
درجہ ملزم فریڈ ہونے میں کامیاب ہو گیا تھا۔ شامل جملہ منشیات کے ساتھ
گواہی میں اس وقت تک رکھا گیا ہے کہ انہیں جیل سے باہر نہیں نکالا
ملزم کی صورت میں طرح و رفتار کے بارے میں ملزم کی گرفتاری کی کامیابی کے بعد
جملہ منشیات 540 جناب سریندر کے پاس رکھی گئی ہیں۔
بھئی 23/02/2020 کو کوالیٹی سے۔

مذکورہ درخواست شدہ عملہ کے مسائل و عملہ پولیس میں دوبارہ بجائے
علم سپارٹس فریڈ ہونے میں کامیاب ہو گیا تھا۔ شامل جملہ منشیات کے ساتھ

مسائل جناب سریندر کے متعلقہ سے منشیات کے بارے میں ملزم کی قیادت اور
جیلر صاحب کو مطلع کیا گیا ہے۔ شامل مع 144 قانونی سپارٹس 144 کے تحت

0316-9539887

DSP Legal

Per comments

pl

MJPA

15/6/20

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**OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR**

Phone No. 091-9210989
Fax No. 091-9212597

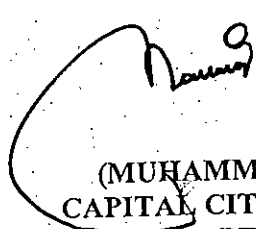
ORDER.

This order will dispose off the departmental appeal preferred by Ex-Constable Hussain Khan No.5882 who was awarded the major punishment of "Dismissal from service" by SSP/Operations Peshawar vide order No.963-67 /PA, dated 18-05-2020.

2- He alongwith IHC Farooq Siyar No.38 and LHC Ihteram Ullah No.4705 of PP Industrial Estate Police Station Hayatabad rushed to the jurisdiction of Police Station Sarband on their own and seized narcotics (19.2 KG Charas and 10.8 KG Opium) from the possession of accused namely Zakir Ullah r/o Bara Khyber without intimation to SHOs Sarband or Hayatabad or any other senior officer. After seizure, he along with the above named Police officials took the accused and narcotics to his home in Surezai for the purpose of bargaining with smugglers party for his release and subsequent return of the seized narcotics. The SHO PS Sarband initiated an enquiry u/s 157 Cr.Pc vide DD No.26, dated 23-02-2020 and during the course of enquiry their involvement in the episode was established hence FIR No.202, dated 26-02-2020 u/s 9 DCNSA/119 Police Act 2017/225-A/170 PPC was registered against them at PS Sarband.

3- He was issued Charge Sheet and Summary of Allegations and SP/Rural Peshawar was appointed as enquiry officer to scrutinize the conduct of the officials. The enquiry officer after conducting proper enquiry submitted his finding and recommended the appellant for major punishment. The competent authority after perusal of the findings of the enquiry officer issued him Final Show Cause Notice. His reply to the Final Show Cause Notice was found unsatisfactory hence he was awarded the above major punishment.

4- He was heard in person in O.R. The relevant record along with his explanation perused, wherein no plausible grounds were found. He also failed to defend himself. Therefore his appeal for reinstatement in service is dismissed/rejected.


(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1390-97 /PA, dated Peshawar the 20-11- 2020

Copies for information and n/a to the:-

1. SSP/Operations Peshawar.
2. Pay Officer/EC-II/EC-I/ OSI/CRC.
3. FMC along with FM.
4. Official concerned.

ATTESTED TO F
[Signature]

-17-5 "K"

IN THE COURT OF MUHAMMAD TAYYIB
Additional Sessions Judge-VIII/Judge Special Court, Peshawar.

CNSA Case No. 106/SPC of 2020
Date of Institution: 02/07/2020
Date of Decision: 20/10/2020

The State

Versus

1. **Farooq Siyar** s/o Shah Jehan R/O Surizai, Peshawar
2. **Hussain Khan** s/o Aslam Khan R/O Dalazak Road, Peshawar
3. **Ihtiram Ullah** s/o Sami Ullah R/O Swati Phattak, Peshawar
(Accused facing trial)
4. **Zakirullah** s/o Zar Kitab R/O Barra, Khyber
(Absconding accused)

FIR # 202 DATED: 26/02/2020 U/S 9-D CNSA, 225-A, 201,170 PPC, 118-D/119 OF KP POLICE ACT, 2017 OF POLICE STATION SARBAND, PESHAWAR.

State Counsel: - Senior.PP Mr. Manzoor Alam
Counsel for Accused: - Mr. Malik Amjid Inayat Advocate.

J U D G M E N T:
20/10/2020

*Manzoor
20-10-2020*

1. Accused namely Farooq Siyar, Husain Khan and Ihtiram Ullah faced trial in the referred case FIR.
2. Gist of the prosecution case set forth in the Naqalmd No.26 dated 23/02/2020 & FIR (Ex.PA) is that on

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(Examiner)
Session Court Peshawar

23/02/2020 complainant Inspector Misal Khan SHO during gust received information that today at morning between 07:00 to 08:00 hours, some police officials came in motorcar Near Adnan Plaza Service Road of Ring Road and intercepted a Changchi Rackshaw and recovered a huge quantity of Charas inside a sack. The police officials took away Changchi Rickshaw, driver and Chars in the referred motorcar on which the complainant asked all the incharge of Choki and Police Station Sarband who showed ignorance. On collecting information, it came to his knowledge that ASI Farooq Siyar, Constable Hussain Khan, Ihtiram Khan of Choki Hayatabad, Peshawar have recovered the Chars in a private motorcar in the jurisdiction of police station Sarband, Peshawar. That an inquiry was conducted and during inquiry, accused Farooq Siyar, Hussain Khan, Ihtiram Khan produced the contraband to the complainant in police station, hence, the instant FIR.

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3. On conclusion of investigation, prosecution submitted complete challan against accused facing trial on 02/07/2020. Accused facing trial were in custody, hence they were summoned through Zamima Bay, who produced and copies of relevant documents were

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24 OCT 2020

(Examiner)
Session Court Peshawar

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provided to them while co-accused Zakirullah s/o Zarkitab was proceeded u/s 512 Cr.P.C. Charge against accused facing trial was framed on 22/07/2020, to which they pleaded not guilty and claimed trial. The prosecution in order to bring home charge against the accused, examined the following (07) witnesses: -

PW-1, Shoukat S.I School of Investigation, Stated that during the days of occurrence, he was posted as S.I in P.S Sarband. On 23.2.2020, Mad report No.26 dated 23.2.2020 made by SHO Misal Khan of P.S Sarand, was entrusted to him for the purpose of inquiry in order to dig out the real facts in respect of the proceedings conducted by Farooq Siyar ASI alongwith constables namely Hussain Khan and Ihtiram Khan of P.S Hayatabad in the jurisdiction of P.S Sarband. He started inquiry, visited the spot i.e. service road in front of Adnan Plaza Ring Road, Peshawar where he could not get any evidence, however, there were rumors regarding the happening of arrest of accused in Qinqi in a chase by the police officials. During the inquiry, on 26.2.2020 he was present in the Police

*Hussain
20.10.2020*

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24 OCT 2020

(Examiner)
Session Court Peshawar

post Ring Road where he received information that Farooq Siyar ASI and constables Hussain and Ihtiram produced the recovered contraband to the SHO Misal Khan, so I stopped the inquiry by concluding that accused has misused their authority by retaining the contraband in their possession illegally.

PW-2, Misal Khan Inspector, Stated that during the days of occurrence, he was posted as SHO P.S Sarband. On 23.2.2020, he was on duty when he received information that from jurisdiction of P.S Sarband, police officials have recovered charas in qinqi Ricksha and took it alongwith accused. Upon this information, he inquired from police post and mobile squads who denied any such recovery. In the meanwhile, he continued his search and it came to his knowledge that accused facing trial, the then ASI Farukh Siyar alongwith constables Hussain and Ihtirram Khan have recovered and took away the said qinqi alongwith recovered narcotics from jurisdiction of P.S Sarband to P.P industrial Estate of P.S Hayatabad. It also came to his knowledge that accused Farooq Siyar has conducted raid in a

M. Misal Khan
20.10.2020

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24 OCT 2020

(Examiner)
Session Court Pothohar

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private vehicle. Accused Farooq Siyar was contacted on his mobile phone who stated that he want to discuss the issue face to face with him. Upon which he informed his superiors regarding the whole situation who ordered him to immediately inquire the matter tentatively. Therefore, Naqal Mad No.26 dated 23.2.2020 was scribed and inquiry u/s.157 Cr.P.C was started. On 26.2.2020, accused facing trial Farooq Siyar brought case property to P.S Sarband which was took into possession vide recovery memo Ex.PW2/1 which include charas 16 packets and opium 09 packets. All the charas were weighed through digital scale and each packet came out to be 1200 grams each. 5/5 grams were separated from each packets and sealed into parcel No.1 to 16 for FSL analysis. The remaining charas was sealed into parcel No.17 (19.120 K.Gs) Ex.P-1 while 5/5 grams were separated from opium and were sealed into parcel No.18 to 26 while remaining opium were sealed into parcel No.27 (10.755 K.Gs) Ex.P-2. All the parcels were sealed by affixing 3/3 monograms of TH.

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20.10.2020

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(Examiner)
Session Court Peshawar

PW-3, Qazi Nisar Ahmad Inspector Legal Khyber, Stated that during the days of occurrence, he was posted as OII P.S Sarband. After registration of the case, the same was handed over to him for the purpose of investigation on 26.2.2020. On the same day, he recorded the Statement of recovery memo witnesses namely Abdus Sattar Khan S.I and constable Naveed and Moharrir Wasi Ullah. On 28.2.2020, accused Farooq Siyar ASI and constables Ihtirram and Hussain Khan appeared before him in P.S and produced BBA Parwana. On pointation of accused, he prepared site plan Ex.PB. He recorded the statements of accused u/s.161 Cr.P.C. As accused Zakir Ullah was avoiding his lawful arrest, therefore, vide his application Ex.PW3/1, he applied and obtained warrant u/s.204 Cr.P.C against him and handed over the same to the DFC concerned for execution. He also placed on file Mad No.12 dated 23.2.2020, Mad No.7 dated 23.2.2020 and Mad No.18 dated 26.2.2020 of P.P Industrial Estate. Thereafter, he was transferred and he handed over the case file to Khizar Hayat OII P.S Sarband.

*M. Nisar Ahmad
20.10.2020*

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24 OCT 2020

(Examiner)
Session Court Peshawar

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PW-4, Wasi Ullah ASI, stated that during the days of occurrence, he was posted as Muharrir in P.S Sarband. On 26/02/2020, he was handed over parcels No.1 to 6 containing 5/5 grams charas and parcels No.18 to 26 containing 5/5 grams of opium and parcel No.17 & 27 containing Charas and opium being case property of instant case which he retained in his safe custody. On 27/02/2020 vide receipt Ex.PW4/2, he sent the samples parcel No.1 to 16 and 18 to 26 to FSL through constable Rifaz who deposited the same in FSL and returned him receiving receipt. His statement was also recorded by I.O u/s 161 Cr.P.C.

PW-5 Abdus Sattar SI, Stated that during the days of occurrence, he was posted as S.I in P.S Sarband. He is marginal witness to the recovery memo already exhibited as Ex.PW2/1. He narrated the story of prosecution as deposed by PW-2.

PW-6 Rifaz No.5915 DFC Stated that on 27.2.2020, the Moharrir Wasi Ullah handed over him parcel No.1 to 16 containing 5/5 grams of charas and parcel No.18 to 26 containing 5/5

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24 OCT 2020

(Examiner)
Session Court Peshawar

grams opium vide receipt No.146/21 dated 27.2.2020 for taking the same to FSL which he duly took and deposited in the FSL by obtaining receiving stamp from concerned official.

PW-7 Khizar Hayat SI OII, Stated that after the transfer of Qazi Nisar S.I, the investigation of present was handed over to him. He received the FSL report Ex.PZ and placed the same on file. After recalling of BBA of accused Farooq Siyar, Ihtiram Ullah and Hussain Khan, he arrested them and issued their card of arrest which are Ex.PW7/1 to Ex.PW7/3 and interrogated them and produced them before Illaqa Magistrate for obtaining 7/7 days police custody vide my application Ex.PW7/4 but the same was turned down and accused were sent to judicial lock up, so he recorded their statements u/s.161 Cr.P.C. After completion of investigation, he handed over the case to the SHO for submission of complete challan. The SHO Misal Khan submitted complete challan Ex.PW7/5. The FIR is Ex.P.A.

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(Examiner)

Session Court, Rawalpindi

4. The remaining witnesses were abandoned by the prosecution. On conclusion of prosecution evidence, the accused was examined u/s 342 Cr.P.C wherein, they professed innocence. However, they neither opted to be examined on oath nor wished to produce defence evidence.
5. I have given my anxious consideration to the respective arguments of the learned Senior.PP and learned counsel for accused facing trial and scanned the record with their able assistance.
6. The case of prosecution is primarily based upon the recovery of 19,200 gram Charse & 10,800 grams opium by the accused facing trial from absconding accused Zakirullah without reporting the incident and then producing it during inquiry before the complainant, separation of samples from the recovered Chars & Opium and sending the same to FSL for analysis and positive report of the FSL showing that the samples, so separated from the recovered stuff, were Chars & opium, whereas, defence claim innocence and false implication.
7. It is the case of prosecution that the complainant received information on 23.02.2020 that accused facing trial have

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(Examiner)
Session Court Peshawar

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recovered chargs from a Qinqi Ricksha and took it alongwith them; that accused Farooq was contacted by the complainant who stated that he would discuss the issue face to face, however, after entering the incident in D.D No.26 dated 23.02.2020, inquiry was initiated and during inquiry accused Farooq Siyar brought the case property to P.S Sarband on 26.02.2020 and then the instant FIR was registered.

8. The case of prosecution is consist of two episodes i.e the first when accused facing trial allegedly recovered the contraband from absconding accused Zakirullah whereas the second episode when accused Farooq Siyar produced the contraband to the complainant in the P.S.
9. So far as the first episode is concerned, admittedly there is no direct evidence thereof. Prosecution was duty bound to first produce convincing evidence to substantiate their plea that accused facing trial have recovered the contraband from the absconding accused Zakirullah. However, record shows that an iota of evidence, in this regard, was not produced. Admittedly, Complainant (PW-02) and other prosecution witnesses are not the eye witnesses of the alleged recovery by the accused facing trial from

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20.10.2020

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(Examiner)
Session Court Peshawar

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Zakirullah and as such the entire case of prosecution regarding the first episode is based on the information of an informer which the complainant opt not to disclose. Likewise, the investigation officer neither examined the police officials of P.S Hayatabad, Peshawar where the accused facing trial were posted nor collected daily diaries regarding the departure of accused facing trial to the place of first occurrence. The entire case of prosecution stands on proving the first occurrence and for that purpose, the D.D regarding movement of accused facing trial to the place of occurrence carries significant importance and non-production thereof cuts the root of prosecution case making the entire episode doubtful and the prosecution version unreliable. Wisdom can also be taken from the judgment rendered in the case of "*Abdul Sattar...Vs...The State*", reported as 2002 PCrLJ 51. Record also shows that the first recovery was allegedly made near the Adnan Plaza on the ring road, however, no CCTV footages were procured to substantiate the presence of accused facing trial at the place of occurrence and their alleged recovery from absconding accused Zakirullah. Also complainant (PW-2), explicitly stated in his statement in chief and DD No.26, that he made contact

Muhammad
20.10.2020

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Examiner
Session Court Peshawar

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with accused Farooq Siyar, however, no CDR date was brought on record regarding such communication. Complainant also admitted in his cross examination that on 23.02.2020, he had visited the spot but had not recorded the statement of anyone to confirm the occurrence. Thus, there being no eyewitness of the first episode and failure of prosecution to produce any circumstantial evidence to connect the accused facing trial with the commission of offence, it can safely be concluded that the prosecution could not establish recovery of contraband by the accused facing trial from the absconding accused Zakirullah. Thus, the first episode stood not proved.

10. So far as the second episode of the alleged occurrence is concerned, prosecution alleged that accused Farooq Siyar produced the case property during inquiry to the P.S himself and handed it over to the complainant and consequently the instant FIR was registered. Complainant alleged that upon the direction of high ups, inquiry was initiated which was entrusted to Shaukat S.I (PW-01). Complainant while appearing as PW-02 admitted in his cross examination that no permission from the high ups or the Magistrate was obtained for the inquiry, which aspect of

Shaukat S.I
20.10.2020

ATTESTED

24 OCT 2020

(Examiner)
Session Court Peshawar

3 -29-

the case makes the entire inquiry untenable. Likewise, complainant admitted in his cross examination that he had received the inquiry report upon which the FIR was lodged. The Investigation Officer (PW-03) also stated to have received inquiry report alongwith FIR. However, the prosecution did not bring on record the said inquiry report, which suggests that it might be not favourable to its case and as such an adverse inference is inevitable in the circumstances. The complainant further stated in his cross examination that accused facing trial are not charged for CNSA. Moreover, accused facing trial are police officials and were well aware of the consequences of producing contraband to the complainant, therefore, it is not appealable to mind that they themselves would take the contraband to the P.S and would create evidence against themselves. The prosecution also could not bring on record the circumstances which had compelled the accused Farooq Siyar to produce the contraband to complainant himself. Admittedly, when accused Farooq Siyar allegedly produced the contraband he was not arrested. Thus, had he himself taken the contraband to the complainant, he would have been arrested, which factum also makes the alleged recovery from accused Farooq Siyar doubtful. Moreover,

M. Usman
20.10.2020

ATTESTED

24 OCT 2020

(Examiner)
Peshawar

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no daily diary was produced regarding production of contraband by the accused Farooq Siyar in P.S to the complainant. PW-1, the Inquiry Officer stated in his statement in chief that all the three accused facing trial produced the contraband to the SHO, whereas, SHO (PW-2) stated that only accused Farooq Siyar produced the case property to him. Even the then learned District Public Prosecutor when asked for issuing guidelines in the instant case, he after detailed discussion opined that *"it would be in the entrust of justice that the police officials are exonerated from the charged leveled against them, defer their arrest and place their names in column-II of the Challan. The OII/SHO is further directed to comply with afore mentioned guidelines and submit complete challan within stipulated period provided in the Criminal Procedure Code"*. Thus, the available record clearly suggests that the prosecution could not substantiate the recovery of case property and the made and manner in which it was produced through cogent, convincing and confidence inspiring evidence and hence the second episode also stood not proved.

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20.10.2020

ATTESTED

24 OCT 2020

(Examiner)

Sub-Inspector Peshawar

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11. In view of the aforesaid contradictions and discrepancies in the prosecution evidence, there exist sufficient doubt in the prosecution case, benefit whereof must accrue in favour of accused facing trial as a matter of right and not as of grace or concession.
12. It is cardinal principle of criminal jurisprudence that prosecution is bound to prove its case beyond any shadow of doubt and the accused are assumed innocent until proved otherwise. In case of every doubt, accused are entitled to the benefit thereof. Under these circumstances, prosecution has not been able to establish its case beyond reasonable doubt against accused facing trial and as such accused **Farooq Siyar, Hussain Khan & Ihtiram** are **acquitted** from the charges leveled against them. They are in custody, be set free immediately, if not required in any other case. So far as case against co-accused **Zakrullah** is concerned, prima facie case exists against him, therefore, he is declared proclaimed offender. Perpetual warrant of his arrest be issued and his name be entered in the register of POs.

MUHAMMAD
20.10.2020

ATTESTED

24 OCT 2020

(Examiner)
Sobhan Co. Ashawar

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13. Case property be kept intact till arrest and trial of above named proclaimed offender. File be consigned to the record room after necessary completion and compilation.

Announced:
20/10/2020

M. Muhammad
(MUHAMMAD TAYYIB)
ASJ-VIII/JSC, Peshawar

CERTIFICATE:

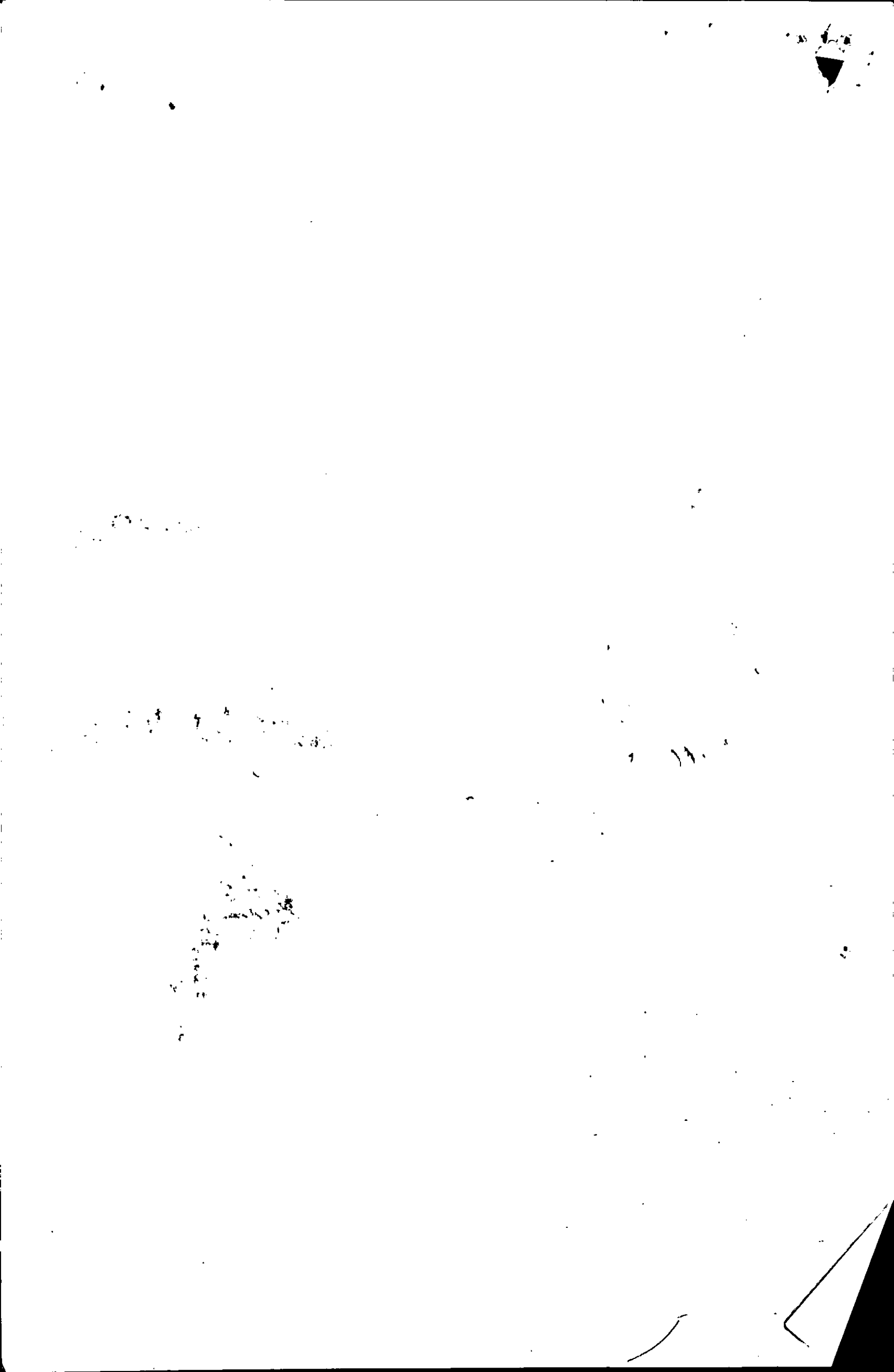
Certified that this judgment of mine consists of Sixteen (16) pages. Each page has been read over and signed by me after making necessary corrections therein.

M. Muhammad
(MUHAMMAD TAYYIB)
ASJ-VIII/JSC, Peshawar.

CERTIFIED TO BE TRUE COPY

No:	16259
Dated of Application	24-10-2020
Name of Applicant	Jibani
Word	8000 R. 20
Fee	
Signature of Applicant	<i>[Signature]</i>
Dated of Preparation	24-10-2020
Date of Delivery	24-10-2020

24 OCT 2020
(Examiner)
Copying Agency Session Court
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.15299/2020.

Hussain Khan Ex- Constable No.5882 of CCP, Peshawar.....**Appellant.**

VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **Respondents.**

REPLY BY RESPONDENTS NO. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

FACTS:-

- (1) Correct only to the extent that the appellant was appointed as constable in the year 2009 in the respondent department, while rest of para is denied on the ground that he has not a clean service record. Record shows that he was an unwilling and none professional officer, thereby not interested in discharging of his official duties.
- (2) Incorrect. The appellant while posted to PP Industrial Estate PS Hayatabad involved himself in a criminal case vide FIR No.202 dated 26.02.2020 u/s '9 DCNSA/119 Police Act 2017/225-A/170 PPC PS Sarband. In this regard he was issued charge sheet with statement of allegations. SP Rural was appointed as Enquiry Officer, who after conducting a thorough probe into the matter submitted his findings report, wherein he held the appellant guilty of arresting smuggler named Zakir Ullah r/o Bara Khyber with narcotics bag having 19.02 KG charas and 10.08 KG opium from the jurisdiction of PS Sarband without intimation to SHO Sarband or SHO Hayatabad or any other senior officer. After seizure, he along with two other Police officials (IHC Farooq Siyar No.38 and LHC Ikhteram No.4705) and then took the accused and narcotics bag to his house at Surizai Bala for the purpose of bargaining with the smugglers for return of narcotics and his release, subsequently returned seized narcotics to smuggler. Upon the findings of enquiry officer he was issued final show cause notice, which he received but his reply was found unsatisfactory. After fulfilling all codal formalities, he was awarded major punishment of dismissal from

service. (Copy of charge sheet, statement of allegations, enquiry report, and final show cause notice are annexed as annexure "A" "B" "C" "D").

- (3) Incorrect. The appellant was issued charge sheet with summary of allegations to which he received and also submitted his written reply, but his reply was found unsatisfactory.
- (4) Incorrect. In fact, proper departmental enquiry was conducted against him in accordance with law/rules. The enquiry officer after conducting enquiry recommended that the charges leveled against him proved and found guilty of misconduct. The enquiry officer provided full opportunity of defense during the course of enquiry, but the appellant failed to defend the charges leveled against him. The enquiry was conducted against him on merit.
- (5) Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice to which he replied, but his reply was also found unsatisfactory.
- (6) Incorrect. The duty of police is to protect life, property and liberty of citizens, preserve and promote public peace but he despite being a member of disciplined force deviated himself from his lawful duty and indulged himself in misconduct. The charges leveled against him were stand proved, hence he was awarded the major punishment of dismissal from service.
- (7) Correct to the extent, that the appellant filed departmental appeal which after due consideration was filed/rejected because the charges leveled against him were proved.
- (8) Incorrect. The punishment orders passed by the competent authority as per law/rules. The appeal of the appellant being devoid of merits may kindly be dismissed.

GROUND:-

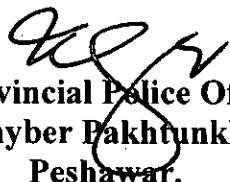
- A. Incorrect. The punishment orders passed by the competent authority as per law/rules and liable to be upheld.
- B. Incorrect. The appellant was treated as per law/rules and no provisions of law have been violated by the respondent department.
- C. Incorrect. The punishment order passed by the competent authority as per law/rules. The charges leveled against him were stand proved.
- D. Incorrect. A Proper departmental enquiry was conducted as per law/rules and the enquiry officer reported that charges leveled against the appellant were proved. The whole enquiry was conducted purely on merit. The appellant was provided full opportunity of defense, but the appellant failed to defend himself. After fulfilling all the codal formalities he was awarded the major punishment.
- E. Incorrect. Proper departmental enquiry was conducted against him. During the course of enquiry, the appellant failed to rebut the charges and the enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges. After


fulfilling of all codal formalities, he was awarded major punishment of dismissal from service by the competent authority. The appellant being a member of a disciplined force, committed gross misconduct. So under the law, acquittal from criminal cases cannot entitle him for reinstatement into service.


- F. Incorrect and denied. The appellant committed a gross misconduct and he defamed the image of police department in the eyes of general public. After fulfilling all of codal formalities, the charges leveled against him were proved.
- G. Incorrect. The appellant himself is responsible for the situation by committing gross misconduct. Furthermore, acquittal from criminal cases cannot entitle him for reinstatement into service.
- H. Incorrect. The charges leveled against him were proved, hence the punishment orders were passed. Acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant in departmental proceedings.
- I. Incorrect. The appellant was associated with the enquiry proceedings and proper opportunity of defense was provided to appellant. He failed to defend the charges leveled against him. The enquiry officer after detail probe reported that the charges were proved. Proper opportunity of defense was provided to the appellant, but he failed to defend himself.
- J. Incorrect. The charges leveled against him were proved. Presence of such black sheep in police force and any kind of leniency will encourage the misuse of authority. The appellant was found guilty of misconduct.
- K. Incorrect. The duty of police is to protect life, property and liberty of citizens, preserve and promote public peace but he despite being a member of disciplined force deviated himself from his lawful duty and indulged himself in misconduct.
- L. Incorrect. Court proceedings and departmental proceedings two different entities. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force, hence he was awarded major punishment.
- M. Incorrect. Detail departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved, hence he was awarded the major punishment of dismissal from service.
- N. Incorrect. The appellant being a member of a disciplined force committed gross misconduct. The charges leveled against him were stand proved, hence he was awarded the major punishment.
- O. Incorrect. The appellant has a blemish service record.
- P. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with costs please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Operations, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.15299/2020.

Hussain Khan Ex- Constable No.5882 of CCP, Peshawar.....Appellant.

VERSUS.

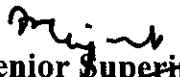
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. Respondents.

AFFIDAVIT.

We respondents 1, 2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Operations, Peshawar.

CHARGE SHEET

Whereas I am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar.

And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Senior Superintendent of Police, Operations, Peshawar hereby charge you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar under Rule 5 (4) of the Police Rules 1975 on the basis of allegations mentioned in the enclosed statement of allegations.

I hereby direct you further under Rule 6 (1) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why the action should not be taken against you and also stating at the same time whether you desire to be heard in person.

In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS) PESHAWAR

No. 291 E/PA dated Peshawar the 28/02/2020

Copy of the above along with Summary of Allegations is forwarded for information and necessary action to the:-

1. Enquiry Officer to please conduct enquiry on day-to-day basis without interruption and submit your findings and grounds thereof to this office within stipulated period.
2. The accused officer.

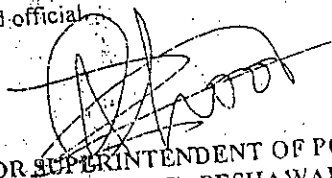
STATEMENT OF ALLEGATIONS

I, SSP/Operations, Peshawar as competent authority, am of the opinion that you IHC Farooq Siyar (GD) alongwith LHC Ikhteram No. 4705 (MHC PP) and Constable Hussain Khan No. 1882 (GD) PP Industrial Estate PS Hayatabad District Peshawar have rendered yourself liable to be proceeded against, as you have committed the following acts/omission within the meaning of section 03 of the Khyber Pakhtunkhwa Police Rules, 1975.

- i) You IHC Farooq Siyar (GD) along with LHC Ikhteram 4705 (MHC PP) and FC Hussain Khan No. 1882 (GD) while posted at PP Industrial PS Hayatabad rushed to the jurisdiction of PS Sarband on your own and seized narcotics (19.2 KG Charas & 10.8 KG Opium) from the possession of accused Zakir Ullah r/o Bara Khyber without intimation to SHOs Sarband or Hayatabad or any other senior officer.
- ii) After seizure, you along with the above named police officials took the accused and narcotics to your home in Surezai for the purpose of bargaining with the smuggler party for their release and subsequent return of the seized narcotics.
- iii) In the meanwhile the SHO PS Sarband on receipt of credible information started enquiry u/s 157 Cr.P.C vide Mad No. 26 dated 23/02/2020 into the alleged seizure of narcotics in his AOR during which your involvement in the episode was established and the seized narcotics was recovered from you. Accordingly, case FIR No. 202 dated 26/02/2020 u/s 9D-CNSA/119 Police Act, 2017/225-A/170 PPC was registered against you at Police Station Sarband.
- iv) Being members of the discipline force, your this act amounts to gross misconduct and render you liable for disciplinary proceedings under Police Rules 1975.

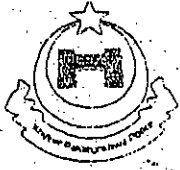
For the purpose of scrutinizing the conduct of afore said police official in the said episode with reference to the above allegations SP Rural is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

The Enquiry Officer shall in accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.


SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS), PESHAWAR

28/02/2020

No. 291 E/PA, dated Peshawar the



OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. 567 /SPR, DT: 14 /2020
Email: officespruralpeshawar@gmail.com

To: The SSP Operations, Peshawar

Subject: DEPARTMENTAL ENQUIRY AGAINST IHC FAROOQ SIAR (GD), LHC IKHTERAM NO. 4705 (MHC PP) AND FC HUSSAIN KHAN NO. 1882, PP INDUSTRIAL ESTATE

Memo:

Please refer to your office diary No291/E/PA, dated: 28.02.2020.

Allegations:

It was alleged that:-

- i) IHC Farooq Siyar (GD) along-with LHC Ikhteram No. 4705 (MHC PP) and FC Hussain Khan No. 1882 (GD) of PP Industrial Estate, PS Hayatabad rushed to jurisdiction of PS Sarband on their own and seized narcotics (19.2 Kg Chars and 10.8 Kg opium) from possession of accused Zakir Ullah r/o Bara Khyber without intimation to SHOs Sarband or Hayatabad or other senior officer.
- ii) After seizure, they took the accused and narcotics to home at Surizai for purpose of bargaining with the smuggler party for their release and subsequent return of the seized narcotics.
- iii) In the meanwhile, SHO Sarband on receipt of credible information started enquiry U/S 157 Cr.P.C vide DD No. 26, dated: 23.02.2020 into the alleged seizure of narcotics in his AoR during which their involvement in the episode was established and the seized narcotics was recovered from them. Accordingly, case FIR No. 202, dated: 26.02.2020 U/S.9DCNSA/119 Police Act, 2017/225-A/170 PPC was registered against them at PS Sarband.

Proceedings:

Charge sheets along-with summary of allegations were served upon the delinquent officials to which they submitted replies. They were heard in person and all the relevant documents were perused.

Statement of Ehteram No. 4705 MHC:

He stated that on 23.02.2020, FC Hussain Khan 5881 came to PP and stated that he has got information regarding smuggling of huge quantity of narcotics. Due to short time, he along-with IHC Farooq Siar and FC Hussain rushed to ZRK Shah Kas road. Meanwhile, informer informed them that the smuggler has changed his route towards Ring Road. During chasing the smuggler, they reached Khyber Nakabandi point near Toll Plaza where the informer called them that the smuggler has now entered in the area of PS Sarband through Achini Road. They kept chasing the smuggler. During chasing the smuggler, he unluckily succeeded in escaping on bike but the narcotics bag while fallen on the earth from smuggler was taken into possession. They took the narcotics to PP. After some times, SHO Sarband made a phone call to IHC Farooq Siar that he has arrested the said narcotics smuggler and hand over the narcotics to him so that FIR could be lodged against him. They went to PS Sarband and handed over the narcotics to SHO Sarband. At about 22:00 hours, SHO Hayatabad summoned them who was informed about the whole situation.

Statement of IHC Farooq Siar:

He stated that on 23.02.2020, FC Hussain Khan informed that he has got an information regarding smuggling of narcotics. Due to short time, they rushed to ZRK Shah Kas road. Meanwhile, informer informed them that the smuggler has changed his route towards Ring Road. During chasing the smuggler, they reached Khyber Nakabandi point near Toll Plaza, where the informer called them that the smuggler has now entered in the area of PS Sarband through Achini Road. They kept chasing the smuggler. Lastly, the smuggler succeeded in escaping on bike but narcotics bag fell to ground from smuggler was recovered. They took the narcotics to PP. After some times, SHO Sarband made a phone call that he has arrested the said narcotics smuggler and hand over the narcotics to him for registration of



OFFICE OF THE
SUPERINTENDENT OF POLICE,
RURAL DIVISION, PESHAWAR
No. 567 /SPR, DT: 11/4 /2020
Email: officespruralpeshawar@gmail.com

FIR against him. They went to PS Sarband and hand over the narcotics to SHO Sarband. At about 22:00 hours, SHO Hayatabad summoned them who was informed about the whole situation.

Statement of FC Hussain Khan:

He also narrated the above mentioned story and stated that they had got information regarding smuggling of narcotics. They started chasing the smuggler keeping in touch with informer but unluckily the said smuggler managed to escape, however, the narcotics fell to ground from smuggler was taken into possession which was brought to PP but on calling by SHO Sarband, they took the said narcotics to PS Sarband and handed over to SHO Sarband.

Findings/Recommendation:

During enquiry, it was established that all delinquent officials had seized the narcotics with malafide intention. They claimed that accused / smuggler managed to escape while narcotics bag fell on ground which was taken into possession by them and was taken to PP Industrial and later was given to SHO Sarband as asked.

However, contrary to their claim, it was proved beyond shadow of doubt that they had arrested the smuggler / accused named Zakir with Narcotics bag from jurisdiction of PS Sarband and then took accused and narcotics bag to house of IHC Farooq Siyar at Surizaye Bala where bargaining took place. Call Data Records of delinquent Police officials and accused named Zakir verifies said fact. Moreover, another proof of their malafide is that they did not bother to inform any of their superior officer about seizure of Narcotics which speaks volumes of their integrity failure.

Statement of allegation is proved against delinquent officials and are recommended for major punishment.

*Agreed with the
opinion of enquiry officer
Hence be given major punishment
Dismissal from
service*

[Signature]
Capt: (R) Najam Ul Haq Liaquat (PSP)
SP Rural Division, Peshawar.

13/5



OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS),
PESHAWAR
Phone. 091-9210508

Dated Peshawar the 07/14 2020

No 784 /PA

FINAL SHOW CAUSE NOTICE
UNDER POLICE RULES, 1975

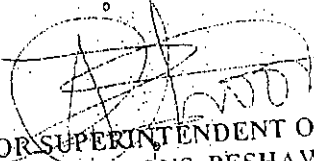
Whereas you Constable Hussain No. 5882 while posted at PP Industrial Estate, PS Hayatabad allegedly committed an act of "misconduct" and were proceeded against under the Police Rules, 1975 vide Charge Sheet bearing No. 291/PA dated 28.02.2020.

2. Whereas Capt @ Najm-ul-Husnain Liaquat, SP/Rural Peshawar was appointed as enquiry officer who has submitted the enquiry report (copy of the enquiry report is enclosed)

3. And whereas the undersigned as "Competent Authority" under the said rules, on considering the findings of the enquiry officer has reached to the conclusion that the charge/allegations contained in the aforesaid Charge Sheet has been established.

4. Now therefore, you Constable Hussain No. 5882 are called upon to show cause in writing within 7 days of the date of receipt of this notice as to why a penalty, including the major penalty of "Dismissal from Service" as provided under the Police Rules, 1975 may not be imposed upon you. You are also required to indicate in your reply if you want to be heard in person.

5. In case no reply is received within the specified period, it would be presumed that you have no defence to offer or have declined to offer the same and accepted the charges and in that case action against you shall be taken ex-parte.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

Constable Hussain No. 5882
(Accused Officer)

